Supreme Court of California
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Jorge E. Navarrete, Clerk and Executive Officer of the Court
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IN THE SUPREME COURT OF STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent v. PRENTICE ROBINSON, Defendant and Appellant	No. S288606 (Third District Court of Appeal No. C098299)

Appeal from Postjudgment Order Affecting Substantial Rights (§ 1172.6)
San Joaquin County Superior Court Nos. SF117220A, STKCRFE20110005529
Honorable Patrick J. Smalling, Presiding Judge

APPELLANT'S OPENING BRIEF ON THE MERITS

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(1904) 17 Harv.L.Rev. 437. 61

Wigmore, John, A Treatise on the Anglo-American System
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INTRODUCTION AND OVERVIEW

This Court's 'Issues Pending' states the issue in this appeal as: "Is a transcript of grand jury proceedings admissible at a Penal Code section 1172.6 evidentiary hearing?" Appellant would reframe the issue slightly to ask: In section 1172.6, subdivision (d)(3), did the Legislature implicitly create a hearsay exception so broad that the People could use grand jury testimony – unexcepted hearsay with no opportunity for cross-examination – without saying it was doing so?

Appellant submits the answer is no, for many reasons. Among them are legal common sense, plain language (in multiple ways), principles of statutory reading, and traditional principles of due process which the Legislature is presumed to have followed.

The Attorney General agreed the answer is no in both cases with the conflicting opinions that brought this case here. (*People v. Robinson* (2024) 106 Cal.App.5th 854, 860 (*Robinson*) [this case]; *People v. Ocobachi* (2024) 105 Cal.App.5th 1174, 1181.)

The answer is the same when one examines how Senate Bill 775 (2021-2022 Reg. Sess.) (S.B. 775) came into being, which shows what the Legislature intended its language to do, as opposed to what it did *not* try to do. The original Senate Bill 1437 (2017-2018 Reg.Sess.) (S.B. 1437) had no 'grand jury exception' to the hearsay rule, and its "record of conviction" language protected the right of cross-examination. (*See, e.g., People v. Reed* (1996) 13 Cal.4th 217, 223 (*Reed*).) Part VI of this brief below will show why S.B. 775 changed that language, but here, appellant can simply ask: Did the Legislature suddenly decide to create a

grand jury hearsay exception in the otherwise ameliorative S.B. 775, without express language saying so? Again, no.

Finally, appellant agrees with everything after the first paragraph in Justice Feinberg's cogent dissent below. (*Robinson*, at pp. 875-879.) (The concern with the first paragraph is only its citation of the '*Davenport* dictum,' addressed in Part VIII, *post*.)

That said, one can understand how the majority below erred. The problem was a sort of 'drifting dictum,' by which a brief dictum in a first opinion (*Cody*) – unnecessary to its correct holding – was taken out of context in a second opinion (*Davenport*), in which the dictum was also unnecessary to its correct holding, but this time turned into an erroneous 'rule' that drifted from statutory language. A third opinion (*Palacios*) caught the drift and used it for an erroneous holding unmoored from statutory language. By the time of the fourth opinion – the majority below – the drifting dictum had taken on a life of its own. By contrast, the dissent below remained anchored in statutory language. (*See Robinson*, at p. 875 [dis opn. of Feinberg, J.].) If sometimes "hard cases[ ] make bad law" (*Northern Securities Co. v. United States* (1904) 193 U.S. 197, 400 [dis. opn. of Holmes, J.] and "bad cases make bad law" (*Swanson v. Superior Court* (1989) 211 Cal.App.3d 332, 342 [conc. and dis. opn. of Channell, J.]), so too, unfortunate dicta can make bad law.

Appellant asks this Court to return to the plain meaning of the language the Legislature enacted, corroborated by other tools of statutory reading and by understanding what the Legislature sought to accomplish by the words it chose.

STATEMENT OF PROCEDURE

I. Original case

Petitioner Prentice Robinson was indicted on various armed robbery charges from January-February 2011. (CT 1-7.) He pled no contest to the substantive charges (except in count 15, the premeditation allegation was stricken), for a stipulated "two-strikes" sentence of 22 years. He pled to:

Counts 1-3, 6-14 and 17: Robbery (Pen.Code, § 211)[1]

Count 4: Attempted robbery (§§ 664/211)

Count 5: Robbery (§ 211)

Count 15: Attempted murder (§§ 664/187)

Count 16: Assault with a firearm (§ 245, subd. (a)(2))

Count 18: Ex-felon in possession of a firearm (now § 29800, subd. (a)(1))

Count 19: Ex-felon in possession of ammunition (now § 30305, subd. (a)(1))

The pleas to counts 1-4, 6-15 and 17 included firearm use enhancements (§ 12022.53, subd. (b)); count 5 had an armed enhancement (§ 12022, subd. (a)(1)); and count 16 had a lesser firearm use enhancement (§ 12022.5, subd. (a)(1)). The prior serious felony he admitted was a 2009 robbery conviction.

The alleged locations and dates of the crimes were:

Counts 1-3 - Tracy Nails (1/6/11)

Count 4 - Lucky Jean Spa (1/20/11)

Count 5 - Chinese Village (1/25/11)

Count 6 - Valero Gas Station (1/26/11)

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[1] Unless otherwise indicated, all statutory references are to the Penal Code.

Counts 7-8 - Lilly's Nail-Spa (1/27/11)

Count 9 - Quickstop (1/27/11)

Count 10 - Pacific Market Place (1/28/11)

Counts 11-12 - Domino's (1/30/11)

Counts 13-16 - Hong Kong Deli (2/3/11)

Count 17 - Ruby Yogurt (2/4/11)

Counts 18-19 - Time of arrest (2/5/11)

The only crime with a gunshot was Hong Kong Deli, the basis of the count 15 attempted murder charge. (CT 39-44; Aug. CT 10/25/11, pp. 2-19.)

II. Section 1172.6 case

Mr. Robinson's section 1172.6 petition to the attempted murder conviction was filed on January 31, 2022. (CT 52-53.) The trial court found a prima facie case. (CT 126.)

Defense counsel repeatedly objected to the prosecution using grand jury transcripts in the evidentiary hearing. (CT 84, 86, 129-131, 146; RT 17, 22.) The objections were overruled. (CT 129, 146; RT 18-20.)

At the April 3, 2023 evidentiary hearing, the trial court admitted grand jury transcripts concerning Sue Chen and Grey Chen (count 15 witnesses) and co-defendant Delbert Rivers (the other possible shooter). (RT 37.) The prosecution presented one witness; Mr. Robinson also testified.

On April 3, 2023, the trial court ruled it did not find either co-defendant Rivers or Mr. Robinson credible, but the evidence proved guilt beyond a reasonable doubt under current law, and denied the petition. (RT 73-74.) Mr. Robinson timely appealed. (CT 149.)

In a divided opinion, the Court of Appeal affirmed. The majority construed the subdivision (d)(3) phrase "...evidence previously admitted at any prior hearing or trial that is admissible under current law" as meaning that the basis for admission of testimony at the prior hearing or trial "must remain a valid basis for admitting the testimony under current law," and any other reading would render the phrase superfluous. (*Robinson*, at p. 868 [citations omitted].) (This is discussed in Argument VIII, *post*.) Though this was a plea case with no prior judicial testimony, the majority deemed grand jury proceedings to involve "admission" of evidence (*Robinson*, at p. 872), on the basis that a grand jury has "sufficient guardrails ... to enhancement reliability and assist a trial court's assessment." (*Id*. at p. 870.) The majority also held the phrase "any prior hearing" includes grand juries, because witnesses are sworn before a grand jury and its function is analogous to preliminary hearings. (*Id*. at p. 869.)

The dissenting opinion construed "hearing" as it is used elsewhere in section 1172.6, which does not include grand juries. (*Id*. at pp. 875-876.) It concluded that "admission" of evidence is not done in a grand jury. (*Id*. at p. 876.) It further explained that grand jury procedures are fundamentally different from judicial due process proceedings with adversarial testing, cross-examination, the right to presence and a judicial officer, so that grand jury transcripts lack the fairness and reliability intended by the Legislature. (*Id*. at pp. 875-878.)

STATEMENT OF EVIDENCE

I. Grand jury evidence.

A. Independent witnesses

Sue Li Chen, who co-owned Hong Kong Deli with her husband, testified that after a takeout customer left, "a man followed to come in and that was the one who robbed us." (3GJRT 250, 252.) She described him as "nervous" and "looking around." (3GJRT 258.)

The man ordered soup. (3GJRT 253, 258.) During the meal, he asked how many people were working in back, and Ms. Chen said there were four. (3GJRT 259.)

As the man finished his meal, Ms. Chen's brother-in-law and sister-in-law took dishes into the kitchen. (3GJRT 259.) Then, the man pointed a gun at Ms. Chen and demanded "give me money, hurry up." (3GJRT 253, 259.)

Ms. Chen gave the man money. (3GJRT 261.) He wore gloves and leaned over the counter to get the cash. (3GJRT 266.)

Ms. Chen's brother-in-law told her husband in the kitchen about the robbery. Her husband started toward the door between the kitchen and customer area with his kitchen knife. (3GJRT 253-254.) The robber fired one shot in his direction which hit the door. (3GJRT 254-255, 267.)

Ms. Chen was shown a photo lineup. She circled a photo which she identified as the gunman. (3GJRT 264.)

Ms. Chen's husband, Grey, testified similarly based on what he saw from the kitchen. (3GJRT 270-275.) He couldn't see the gunman well through the plastic on the door, and only saw he was Black. (3GJRT 275-276.)

B. Co-defendant Rivers

Delbert Rivers had a cooperation agreement for pleas to seven charges – five robberies between January 26-30, 2011 – and a stipulated 12-year sentence. He was told his case had life exposure. (5GJRT 355-357, 413-415.) Rivers also admitted a 2000 robbery conviction. (5GJRT 357.) The grand jury did not hear evidence regarding what other crimes Rivers had committed, and the prosecutor rejected a question about whether Rivers was on probation at the time of the 2012 robberies. (5GJRT 418.)

Co-defendant Rivers testified he met Prentice Robinson through his son a month before the robberies. They hung around together to smoke marijuana. (5GJRT 409.) He said Mr. Robinson threatened him and his family before and during the first robbery, and also later. (5GJRT 371, 377, 395-396, 408-410.)

Rivers testified that in the robberies to which he pled, he entered first with Mr. Robinson following as gunman, at Lilly's Nails (5GJRT 359-368), QuickStop, (5GJRT 368-377, on video), Pacific Market (5GJRT 377-384), Valero (5GJRT 384-391, on video), and Domino's (5GJRT 391-398). He said he got nervous after the Domino's robbery and stopped. (5GJRT 411-412.) He testified he'd never heard of Lucky Jean Spa (5GJRT 402.)

Co-defendant Rivers told the grand jury that Mr. Robinson said he wanted to rob the Hong Kong Deli, though then Rivers wasn't sure if it was Hong Kong Deli. (5GJRT 402.) Rivers said Mr. Robinson took one of his bicycles, came back breathing hard, ran inside, and "told me that he just hit one of those spots down the street." (5GJRT 402.)

II. Live hearing evidence

A. Prosecution

The prosecution's live witness was Det. Larry Naso, investigating officer for the robberies. (RT 25.)

Det. Naso showed Sue Chen a photo six-pack, in which she identified Mr. Robinson as the gunman. (RT 25-28.) While Det. Naso testified the photo depicted Mr. Robinson as he appeared at that time, Mr. Robinson had a tattoo under his left eye, and the photograph Ms. Chen saw didn't have a tattoo. (RT 33-35.)

Det. Naso never showed Ms. Chen a photo of Delbert Rivers. (RT 32.) Though he read a standard admonition from a card, it was in English, her primary language was a Chinese dialect, and there was no interpreter. (RT 30, 32.)

B. Defense

For the Hong Kong Deli robbery, Mr. Robinson testified co-defendant Rivers asked him "would I go with him to do a robbery." Mr. Robinson agreed. Co-defendant Rivers asked, "did I have the gun on me," referring to a gun from previous robberies. Mr. Robinson gave Rivers the gun. (RT 41-42.)

The twosome walked from Rivers' apartment to the Hong Kong Deli, which was across the street from Mr. Robinson's apartment, a 30-35 minute walk. (RT 43, 50.) When they reached the side of the building, Rivers walked around to the front, then gave Mr. Robinson a thumbs up. (RT 43-44.)

Mr. Robinson walked toward the business and peered through the window. (RT 45-46.) He saw two people eating and a lady behind the counter, who looked at him for three seconds. (RT 46-47.) He saw that she noticed him through the window.

He returned to Rivers, and said it was OK to enter. (RT 47-48.) Rivers told Mr. Robinson to wait and look out for him. (RT 48)

About 2-3 minutes later, Rivers met Mr. Robinson on the side of the building, and they ran to Mr. Robinson's apartment. (RT 49-50.) Rivers never said what happened inside. (RT 50.)

Mr. Robinson admitted the other robberies to which he pled, and admitted having the gun in them. Before he met Rivers, he had committed "a handful" of robberies. (RT 51-52.) Tracy Nails was with someone other than Rivers (RT 52-53); Lilly's Nails (RT 54-55), Pacific Marketplace (RT 55) and Domino's (RT 55-56) were with Rivers; and he did Ruby's Yogurt by himself (RT 56). He denied threatening Rivers. (RT 55-56.) He had prior convictions for robbery and escape. (RT 58-59.)

Mr. Robinson testified that the robbery of Lucky Jean Spa (count 4), which was captured on video, included Rivers. (RT 53-54.) There was no contrary evidence. Rivers told the grand jury he'd never heard of Lucky Jean Spa. (Vol. 5, Grand Jury RT ("5GJRT) 402; *see ante*, p. 21.)

When asked why he pled to attempted murder and use of a gun when he didn't do either, Mr. Robinson answered that his public defender advised it, because if he went to trial, he was facing a sentence of 35 years or life. (RT 60.)

C. Stipulation

It was stipulated that after the Valero robbery, co-defendant Rivers went elsewhere to sell drugs. (RT 23.)

LEGAL STANDARDS

This Court provided the history of S.B. 1437, and its clarifying legislation S.B. 775, in *People v. Arellano* (2024) 16 Cal.5th 457, 467-468. That history is adopted by reference.

S.B. 1437 and 775 implicate a significant liberty interest for a petitioner seeking retroactive relief under Penal Code section 1172.6: If that petitioner qualifies for relief, they are freed from restraints on their liberty. S.B. 1437, as clarified by S.B. 775, represents a determination by the Legislature that prior laws governing individual liberty interests were too harsh. (*People v. Njoku* (2023) 95 Cal.App.5th 27, 44-45; *People v. Clements* (2022) 75 Cal.App.5th 276, 297.)

In S.B. 1437, "the objective of the Legislature ... was not to extend 'an act of grace' to petitioners. [Citations.] Rather, the Legislature's statement of findings and declarations confirms it approved Senate Bill 1437 as part of a broad penal reform effort. The purpose of that undertaking was to ensure our state's murder laws 'fairly address[ ] the culpability of the individual and assist[ ] in the reduction of prison overcrowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual.' [Citations.] (*People v. Lamoureux* (2019) 42 Cal.App.5th 241, 255-256 [also quoted in, e.g., *People v. Nash* (2020) 52 Cal.App.5th 1041, 1082-1083].)

ARGUMENT

I. The plain meaning of "hearing" in subdivision (d)(3), taken by itself, excludes grand jury transcripts.

The majority below recognized that its result, approving *ex parte* grand jury transcripts in section 1172.6, subdivision (d)(3) hearings, required it to construe "hearing" (in the phrase "... previously admitted at any prior hearing...") to permit that result. (*Robinson*, at p. 869.) Thus, appellant examines the meaning of "hearing."

In that light, "[t]he function of the court in construing a statute 'is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.' (Code Civ.Proc., § 1858.) 'If there is no ambiguity in the language of the statute, "then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs." ' [Citation.] Therefore, if a statute is unambiguous, it must be applied according to its terms. Judicial construction is neither necessary nor permitted.... [Citations.]" (*Ventura County Deputy Sheriffs' Ass'n v. Board of Retirement* (1997) 16 Cal.4th 483, 492.)

"Occam's razor—avoid hypothesizing complicated explanations when a simpler one is available—applies here." (*Brodie v. WCAB* (2007) 40 Cal.4th 1313, 1328.) The simplest approach is plain meaning.

Black's Law Dictionary (12th ed. 2024, on-line ed.) defines "hearing" (italics, bold, and small caps in original):

> **1.** A formal, scheduled setting in which an affected person presents arguments to a decision-maker <a hearing on zoning variations>. **2.** In legislative practice, a proceeding in which legislators or their designees receive testimony about legislation that might be enacted <the shooting victim spoke at the Senate's hearing on gun control>. **3.** A judicial session, usu. open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying <the court held a hearing on the admissibility of the DNA evidence>. — Also termed *judicial hearing*. See PRELIMINARY HEARING. **4.** *Equity practice.* A trial. **5.** *English law*. ORAL ARGUMENT.

These definitions all implicate proceedings open to the person affected, at which they can advocate for their position. Three of the five implicate due process judicial proceedings. None of the five implicates grand jury or other *ex parte* proceedings.

II. The plain meaning of "hearing" in subdivision (d)(3), taken in subdivision (d)(3)'s context, excludes grand jury transcripts.

A. Generally

Of course, " '[t]he interpretation of a statute ... should not end ... with a dictionary definition of a single word used therein.' [Citation.] Instead, to interpret a statute, we consider all of its language 'in context' and with reference to 'provisions relating to the same subject' and 'the whole system of law of which [the statute] is a part' [citation]" (*Skidgel v. California Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 20), " ' "keeping in mind the nature and obvious purpose of the statute ...." [Citation.]' .... [Citation.]" (*People v. Lewis* (2021) 11 Cal.5th 952, 961 (*Lewis*).)

Thus, appellant next evaluates "hearing" in that broader context.

B. As a foundational point, there is a right of cross-examination of live witnesses in (d)(3) hearings, from Evidence Code section 300 and fundamental due process.

Beginning with a foundational point, appellant is unaware of any authority holding that there is no right to cross-examination in a subdivision (d)(3) hearing *itself*. To the contrary, if either party calls a live witness, the other party can cross-examine. That has been true since S.B. 1437 was enacted; no authority has postulated that S.B. 775 was needed to secure that right. This will assist in illuminating what the Legislature meant in subdivision (d)(3) by "hearing."

There are two basic sources for the right of cross-examination in a subdivision (d)(3) hearing, addressed next.

1. Evidence Code section 300.

The first is Evidence Code section 300:

> Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal or superior court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

"Evidence Code section 300 makes it clear that, except as otherwise provided by statute, the Evidence Code applies to every evidentiary hearing in the state courts....' [Citations.]" (*Jauregi v. Superior Court* (1999) 72 Cal.App.4th 931, 939; *Bonnie P. v. Superior Court* (2005) 134 Cal.App.4th 1249, 1255.)

Applying Evidence Code section 300 to cross-examination of live witnesses in a (d)(3) hearing, the key statute is Evidence Code section 711:

> At the trial of an action, a witness can be heard only in the presence and subject to the examination of all the parties to the action, if they choose to attend and examine.

"In judicial proceedings, the trustworthiness of the evidence and the reliability of the factfinding process depend upon the notion that persons who possess relevant information appear in court and undergo cross-examination. (See Evid.Code, § 711 [statutory right to confront witnesses].)" (*Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 608.) A subdivision (d)(3) hearing is one such judicial proceeding.

Since S.B. 1437 had no conflicting statutory provision, Evidence Code section 300 permitted cross-examination of live witnesses in a hearing under then-section 1170.95.

2. Fundamental due process.

The second source of the right of live cross-examination in a (d)(3) hearing is fundamental due process, a constitutional guarantee that assures cross-examination of witnesses. (*In re Mary S.* (1986) 186 Cal.App.3d 414, 419.)

"Courts have long recognized the importance of cross-examination and its crucial relationship to the ability to defend against accusations, deeming it a due process right that is fundamental to a fair proceeding. [Citations.]" (*CSV Hospitality Mgt. LLC v. Lucas* (2022) 84 Cal.App.5th 117, 125.) "Though the right to cross-examine adverse witnesses has been mandated by the Legislature, it is not merely a statutory right.... Because it relates to the fundamental fairness of the proceedings, cross-examination is said to represent an 'absolute right,' not merely a privilege [citations]...." (*Fost v. Superior Court* (2000) 80 Cal.App.4th 724, 733.)

C. "Hearing," in the context of subdivision (d), refers to a judicial hearing with statutory and due process rights of cross-examination.

The right to cross-examine witnesses in a subdivision (d)(3) evidentiary hearing, discussed in section (B) above, is this section's foundation: In the portion of section 1172.6 that covers proceedings after an order to show cause (OSC), subdivision (d), "hearing" refers to a proceeding in which the parties had a right to cross-examine. Therefore, it doesn't refer to a grand jury.

"Hearing" is used seven times in subdivision (d). Here are the references, with "**hearing**" in boldface:

> (d)(1) Within 60 days after the order to show cause has issued, the court shall hold a **hearing** to determine whether to vacate the [qualifying] conviction and to recall the sentence and resentence the petitioner ....
>
> (2) The parties may waive a resentencing **hearing** and stipulate that the petitioner is eligible to have [qualifying] conviction vacated and to be resentenced....
>
> (3) At the **hearing** to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is guilty of murder or attempted murder under California law as amended by the changes to Section 188 or 189 made effective January 1, 2019. The admission of evidence in the **hearing** shall be governed by the Evidence Code, except that the court may consider evidence previously admitted at any prior **hearing** or trial that is admissible under current law, including witness testimony, stipulated evidence, and matters judicially noticed. The court may also consider the procedural history of the case recited in any prior appellate opinion. However, hearsay evidence that was admitted in a preliminary **hearing** pursuant to subdivision (b) of Section 872 shall be excluded from the **hearing** as hearsay, unless the evidence is admissible pursuant to another exception to the hearsay rule....

Of those seven uses of "**hearing**" in subdivision (d), the first four refer to the current section 1172.6 proceeding (subdivisions (d)(1), (d)(2), and two in (d)(3)), a judicial hearing with guarantees of cross-examination as explained in section (B) above. Therefore, they all refer to a judicial hearing that conforms to Evidence Code sections 300/711 and fundamental due process.

The sixth and seventh uses of "**hearing**" in subdivision (d) also refer to judicial hearings with due process and Evidence Code section 300/711 guarantees of cross-examination. The sixth

describes the current hearing, which has these guarantees for the reasons in section (B) above. The seventh refers to a "preliminary hearing," which also has the guarantees of cross-examination that conform to due process and Evidence Code section 300/711. (Pen.Code, § 865; *People v. Reed* (1996) 13 Cal.4th 217, 223 (*Reed*).) (The one exception in preliminary hearings, "Prop. 115 hearsay" for certain law enforcement officer testimony under Penal Code section 872, is expressly excluded as evidence in a section 1172.6 evidentiary hearing.)

Transcripts of grand jury proceedings, the fifth iteration of "**hearing**" in section 1172.6, subdivision (d) and the last one considered here, are nothing of the sort. They are hearsay if offered for truth, since they are extrajudicial proceedings at which the affected party has no right of cross-examination, and thus are inadmissible under Evidence Code section 1200 as applied via section 300. (*Accord, e.g., People v. Lopez* (1997) 52 Cal.App.4th 233, 241, fn.3; *Williams v. Hartford Ins. Co.* (1983) 147 Cal.App.3d 893, 899 [quoting 1 Jefferson, Evidence Benchbook (2d ed. 1982), § 1.1, p. 4].) Similarly, with no right of cross-examination, a grand jury transcript lacks the due process guarantee common to the other six iterations of "**hearing**" in subdivision (d).

It is illogical to theorize that this iteration of "**hearing**" in subdivision (d) had a completely different meaning than the other six, such that unlike the other six, it encompassed a proceeding for which there was no Evidence Code section 300 or due process right of cross-examination. That is particularly so since the (d)(3)

hearing *itself* involves a right of cross-examination of live witnesses, as described above.

Nor would such a theory follow basic legal principles. "Under well-established canons of statutory construction, 'when the same word [or phrase] appears in different places within a statutory scheme, courts generally presume the Legislature intended the word [or phrase] to have the same meaning each time it is used.' [Citation.]" (*People v. Braden* (2023) 14 Cal.5th 791, 806; *In re A.N.* (2020) 9 Cal.5th 343, 363.)

Since "**hearing**" appears seven times in the same *subdivision* that defines post-OSC section 1172.6 proceedings, and in six of those seven appearances it plainly refers to evidence with the opportunity to cross-examine, the seventh must do so too.

The dissent below made the same point, explaining how "grand jury sessions or proceedings are fundamentally different from the hearings and trials that are undisputedly covered by section 1172.6, subdivision (d)(3), such as preliminary hearings or criminal trials. [Citation.]" (*Robinson*, 106 Cal.App.5th 854, 875-876 [dis. opn. of Feinberg, J.].) So did the People. (*Id.* at p. 869.) Appellant agrees with both.

III. Analyzing the broader context of the sentence in which it is found, and of all provisions in subdivision (d)(3) that govern admissibility of evidence, the word "hearing" excludes grand jury transcripts.

A. The meaning of the single (d)(3) sentence that begins "The admission of evidence ..." is the issue in dispute, because the only other (d)(3) sentences that govern admissibility of evidence (the two after it) are effectively redundant and thus need not be analyzed further here.

Appellant starts with the entire (d)(3) sentence that includes the broader phrase "... evidence previously admitted at any prior hearing or trial that is admissible under current law ...," with emphasis and bracketed numbers added for reference:

> **[1]** The admission of evidence in the hearing shall be governed by the Evidence Code, **[2] except that** the court may consider evidence **[2a]** previously admitted at any prior hearing or trial **[2b]** that is admissible under current law, **[2b-i]** including witness testimony, stipulated evidence, and matters judicially noticed.

Appellant will use the bracketed, boldfaced numbers as reference criteria (e.g., "criterion **[1]**") throughout this brief.

The above sentence is reprinted for a 'deeper dive' into plain meaning, to examine subdivision (d)(3)'s language "in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." (*In re N.R.* (2023) 15 Cal.5th 520, 538.) While the majority below rested on its theory of the phrase "... any prior hearing" (*id.* at p. 869), it also relied on its view of the broader phrase "... evidence previously admitted at any prior hearing or trial that is admissible under current law" (*id.* at pp. 867-868), of which "any prior hearing" was a part. This Part analyzes the broader phrase.

Apart from the subdivision (d)(3) sentence quoted at the top of the previous page, the only other portions of (d)(3) that regulate types of evidence admitted in an evidentiary hearing are the two sentences after – the one that permits using procedural history of appellate opinions, and the one that excludes preliminary hearing "Prop. 115 hearsay" (Pen.Code, § 872, subd. (b)) unless another hearsay exception applies. Both of those conform to the Evidence Code (criterion **[1]** on the previous page): The procedural history of appellate opinions is judicially noticeable under Evidence Code section 452, subdivision (d) (*Welch v. Welch* (2022) 79 Cal.App.5th 283, 289, fn.3; *People v. Putney* (2016) 1 Cal.App.5th 1058, 1063, fn.4), and negation of the preliminary hearing "Prop. 115 hearsay exception" reimplements the Evidence Code hearsay rule (§ 1200).

Since those two sentences already comply with the Evidence Code (criterion **[1]** in the block quote on the previous page), they are effectively redundant for our purposes. Thus, appellant can set them aside and focus on the single (d)(3) sentence at the top of the previous page, since it contains the Evidence Code exception (criterion **[2]**) that is central to his disagreement with the majority below.

B. By plain meaning of the sentence ("The admission of evidence...."), **both** clauses in the exception to the Evidence Code ("...except that the court may consider...") must be satisfied, which a grand jury transcript cannot do.

The plain meaning of the multi-part admissibility criterion in the (d)(3) quote on the previous page, taking the numbered criterion references in sequence, is disaggregated thus:

[1] In a subdivision (d)(3) hearing, admission of evidence is governed by the Evidence Code, subject to:

[2] The exception to the Evidence Code created by the "except that the court may consider...." clause.

In turn, for evidence to satisfy this "except that the court may consider..." exception to the Evidence Code (criterion **[2]**), the evidence must satisfy both of the following simultaneously:

[2a] It must have been "previously admitted at any prior hearing or trial," ***and*** if that is true, then –

[2b] It must ***also*** be "admissible under current law."

If evidence doesn't comply with both **[2a]** and **[2b]**, it is inadmissible under this exception.

The "including...." clause **[2b-i]** is merely illustrative (nonrestrictive); it contains examples of types of evidence that meet criterion **[2b]**. " 'It is hornbook law that the use of the word 'including' indicates that the specified list ... that follows is illustrative, not exclusive.' " (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1083 [citations omitted].) Thus, the "including" clause doesn't change the meaning of the paired Evidence Code exception **[2a]/[2b]**.

Accordingly, the (d)(3) sentence that begins "The admission of evidence in the hearing..." has a single plain meaning: For evidence not within the Evidence Code (criterion **[1]** at the top of this Part), the exception in criterion **[2]** applies only if the evidence meets both criteria **[2a]** and **[2b]** – i.e., both **[a]** "previously admitted at any prior hearing or trial," and **[b]** "admissible under current law."

Grand jury transcripts cannot satisfy the paired criteria **[2a]/[2b]**: They never meet criterion **[2b]**, because they are hearsay inadmissible under current law.

In section (D) below, appellant will elucidate how the paired criteria **[2a]** and **[2b]** work together.

C. A grammatical analysis yields the same result.

While the above is a routine plain-language analysis, the sentence at issue ("The admission of evidence ....") is complex. Accordingly, appellant also offers an analysis for this Court to "interpret [the] statute consistently with the meaning derived from its grammatical structure. [Citation.]" (*People v. Youngblood* (2001) 91 Cal.App.4th 66, 71; *see also, e.g., Horwich v. Superior Court* (1999) 21 Cal.4th 272, 280.)

The phrases "previously admitted at any prior hearing or trial" and "that is admissible under current law" are known as "restrictive relative clauses" (or "integrated" or "defining" relative clauses); i.e., relative clauses that define the antecedent noun they modify by restricting it, and thus are essential to the sentence. (*See, e.g., Yahoo Inc. v. National Union Fire Ins. Co. etc.* (2022) 14 Cal.5th 58, 68; *Seemann v. Seemann* (2025) 318 Neb. 643, 653 [18 N.W.3d 118, 127].) The two relative clauses in the exception to the Evidence Code requirement, **[2a]** and **[2b]**, follow the typical pattern for restrictive relative clauses, in that the only relative pronoun used is "that," and neither clause is set off by commas. (*See, e.g., United States v. Nishiie* (9th Cir. 2021) 996 F.3d 1013, 1021-1022 [quoting Chicago Manual of Style (17th ed. 2017), § 6.27].)

Because the sentence "The admission of evidence...." contains two successive (or "stacked") restrictive relative clauses, both clauses must be satisfied. That is the nature of a restrictive relative clause – it *restricts* the antecedent noun it modifies. Two such clauses in sequence present a double restriction, and both contribute meaning essential to the sentence.

Here, the first restrictive relative clause, "... previously admitted at any prior hearing or trial," modifies the antecedent noun "evidence." Its format is that of a "reduced" clause: The clause would say the same thing were it headed by the relative pronoun "that," as is customary for restrictive relative clauses – i.e., it could have said "...evidence <u>that was</u> previously admitted at any prior hearing or trial..." – but "that" can be omitted for simplicity without losing meaning. (*See, e.g., State v. Hill* (2023) 291 N.C.App. 633, 641 & fn.2 [896 S.E.2d 216, 222].)

The second restrictive relative clause – "... that is admissible under current law" – similarly modifies the noun "evidence" (it could also be considered as modifying the first restrictive clause, since the result is the same either way). However, it could not be formatted as a "reduced" clause, because the reduction of the first clause makes the word "that" important for both clauses to be fully understood.

One might then ask: Since criterion **[1]** at the top of this Part states "[t]he admission of evidence in the hearing shall be governed by the Evidence Code," and criterion **[2b]** says the evidence must be "admissible under current law, how can criterion **[2b]** be part of an exception to criterion **[1]**?

The answer, again, is that restrictive relative clauses **[2a]** and **[2b]** are successive restrictions, which together are essential to the criterion **[2]** exception to the Evidence Code. Neither functions without the other.

D. Criteria **[2a]** and **[2b]** work together to permit the admission of evidence without regard to the former testimony unavailability requirement in Evidence Code section 1291, subdivision (a), but apart from that exception, the evidence must be admissible under current law.

Since criterion **[2a]**, "... [that was] previously admitted at any prior hearing or trial," is part of an exception to the Evidence Code (the general rule of primary criterion **[1]**), one may ask: To what Evidence Code provision is it part of an exception?

The answer should be clear: Since criterion **[2a]** describes former testimony, it defines an exception to the former testimony provision, Evidence Code section 1291. Criterion **[2a]** helps create this exception by overriding (negating) the witness unavailability requirement in subdivision (a) of section 1291, by making former testimony admissible without regard to witness availability.

However, criterion **[2b]**, "... that is admissible under current law....," must also be effectuated. Criterion **[2b]** cannot be read to negate criterion **[2a]**, since both restrictive relative clauses are essential to the sentence. (*See also Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22 [courts do not "construe statutory provisions so as to render them superfluous"].) Thus, criterion **[2b]** is read to say that every other admissibility of evidence rule under current law – *other than* the former testimony witness unavailability requirement negated by **[2a]** – is applicable.

The result is the same: Grand jury transcripts cannot satisfy both restrictive relative clauses simultaneously, since they are not "admissible under current law" under clause **[2b]**. Therefore, they are inadmissible.

The majority below resisted a plain-English reading of "hearing," on the basis that "the section 1172.6 resentencing hearing is not a trial, criminal prosecution, or subsequent retrial [citation]" and "[m]any of the protections under the Sixth Amendment do not apply to the petitioning process under section 1172.6. [Citations.]" (*Robinson,* 106 Cal.App.5th 854, 870-871.) The question isn't what a section 1172.6 proceeding is *not*. Rather, it is what the Legislature said a section 1172.6 proceeding *is,* and how it is conducted. For that, courts cannot properly go beyond the Legislature's plain language. (*Ante*, Part II(A))

Could the Legislature have made this easier? Perhaps; if "otherwise" had been inserted before "admissible," this case might not be here. But in the press and stress of business, legislators – human beings all – can't always be expected to utilize perfect phraseology. (*State v. Barnes* (2016) 196 Wash.App. 261, 270 [382 P.3d 729, 734]; *Mason v. Rogers* (1823) 14 Ky. 375, 377.)

The question is not perfection; the question is what the statute says. In plain English, it says the Evidence Code governs a (d)(3) hearing, except for evidence that <u>both</u> **[2a]** was previously admitted at a prior hearing or trial, <u>and</u> **[2b]** is admissible under current law. Grand jury transcripts fail.

IV. *Noscitur a sociis*, for three different reasons, yields the same result: Grand jury transcripts are inadmissible.

A. Generally

The same result obtains by *noscitur a sociis*, a common method of statutory reading. While it is only a guide to legislative purpose (*People v. Garcia* (2016) 62 Cal.4th 1116, 1124), here it further corroborates the plain-language analyses in Parts I-III above.

"[U]nder the *noscitur a sociis* canon, a word ' "is known by its associates." ' " (*Scholes v. Lambirth Trucking Co.* (2020) 8 Cal.5th 1094, 1107-1108 [citations omitted].) "[The] *noscitur a sociis* canon is a way to observe whether a 'common thread runs through' the terms of a statute, and places statutory terms in context rather than 'in a vacuum, as if [they] stood alone in the text.' " (*People v. Garcia* (2016) 62 Cal.4th 1116, 1124 [citation omitted].)

Noscitur a sociis applies in three different ways.

B. Applied to the "including..." clause

First, it applies to the three-clause modifying passage where it occurs (criterion **[2b-i]**), that "... the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including *witness testimony*, stipulated evidence, and matters judicially noticed." (Italics and underscoring added)

As discussed in Part III(B) above, the "including..." criterion **[2b-i]** provides three examples of the "...admissible under current law" criterion **[2b]**, which is half of a two-part exception to the

applicability of the Evidence Code (criterion **[2a]/[2b]**, an exception to criterion **[1]**). The last two phrases in criterion **[2b-i]**, "stipulated evidence" and "matters judicially noticed," are examples of evidence that is "admissible under current law" without sacrificing any rights of the petitioner. Using *noscitur a sociis*, "witness testimony" in criterion **[2b-i]** should be construed similarly, as not sacrificing rights of the petitioner.

A grand jury transcript bears no relation to "stipulated evidence" and "matters judicially noticed." Unlike those types of incontrovertible evidence, grand jury transcripts sacrifice the crucial right of cross-examination. Permitting the phrase "witness testimony" to include any witness testimony, even if the petitioner never had a right of cross-examination, would make it "stick out like a sore thumb," thus "call[ing] to mind the line from a classic Sesame Street tune: 'one of these things is not like the others / one of these things just doesn't belong.' See Sesame Street, One of These Things (Is Not Like the Others) (Columbia Records 1970)." (*State Automobile Mut. Ins. Co. v. Tony's Finer Foods Enterprises, Inc* (N.D.Ill. 2022) 589 F.Supp.3d 919, 928.)

C. Applied to all evidentiary rules in subdivision (d)(3)

Second, *noscitur a sociis* can be applied to all forms of evidence in subdivision (d)(3). The forms of evidence in subdivision (d)(3) include "[1] *witness testimony*, [2] stipulated evidence, and [3] matters judicially noticed" (italics and numbering added), which were discussed in the previous section. They also include [4] "the procedural history of the case recited in any appellate opinion," and [5] preliminary hearing transcripts

other than "hearsay evidence that was admitted ... pursuant to subdivision (b) of Section 872...."

The bracketed numbers in the preceding paragraph were added for reference. In this section, appellant will call them "Forms."

Leaving aside momentarily the phrase "*witness testimony*" (Form [1]) on which the majority below relied, what do the other four Forms ([2], [3], [4] and [5]) have in common? None permit admissibility of hearsay of potentially disputable facts for which there was no right of cross-examination of the hearsay declarant, and two of the four ([4] and [5]) expressly require that such evidence be excluded.

Specifically: Forms [2] and [3] are beyond dispute. Form [4] is a hearsay exception that permits reliance on an opinion's procedural history, but *only* the procedural history – also beyond dispute, since it is subject to judicial notice anyway (*e.g., Welch v. Welch, supra,* 79 Cal.App.5th 283, 289, fn.3). This means allegations and facts in an opinion, which by its nature cannot be cross-examined, remain hearsay not subject to that exception. (*People v. Flores* (2022) 76 Cal.App.5th 974, 988 [disappr'd on other grds. in *People v. Patton* (2025) 17 Cal.5th 549, 569 & fn.12]; *People v. Clements, supra,* 75 Cal.App.5th 276, 292.) And Form [5] negates the preliminary hearing exception for "Prop. 115 hearsay," thus also excluding hearsay with no right of cross-examination.

That leaves Form [1], which the majority below posited to include grand jury transcripts for which – unlike Forms [2]-[5] – there was never a right of cross-examination. The result is

similar to the previous section: A court "appl[ies] *noscitur a sociis* and search[es] for the 'common quality' in a list of words... the 'most general quality' – the least common denominator, so to speak – relevant to the context. [Citations.]" (*Ibid*. [citing Antonin Scalia & Bryan Garner, Reading Law: The Interpretation of Legal Texts (2012), p. 196].)

Here, that least common denominator is preservation of the right of cross-examination, which also is affirmatively furthered by Forms [4] and [5]. Therefore, Form [1] must be read as preserving that right, just like the others. (*See also* One of These Things (Is Not Like The Others), *op. cit. ante*.)

D. Applied to S.B. 775 as a whole

Finally, applying *noscitur a sociis* to all of S.B. 775, every other provision of S.B. 775 that changed S.B. 1437 was ameliorative, making it easier for individuals to obtain S.B. 1437 relief. (*See* West 2021 Cal.Legis.Serv. Ch. 551 (S.B. 775), linked from the "Credits" in Westlaw's section 1172.6 reprint [showing S.B. 775's additions to S.B. 1437].)

It would be illogical to say that for this one provision, the Legislature did the opposite, creating an extra obstacle to relief for situations where the prosecution offered hearsay the petitioner had no right to cross-examine. (And as explained in Part VI below, the Legislature did no such thing.)

Since the rest of S.B. 775 was ameliorative, the (d)(3) phrase "witness testimony" is also ameliorative. Using *noscitur a sociis*, no basis exists to read it otherwise.

V. A burden of proof beyond a reasonable doubt maximizes error reduction in seeking truth; by contrast, unexcepted hearsay with no right of cross-examination undermines error reduction because of its unreliability; given this inherent conflict, there is no basis to presume the Legislature intended both.

In discerning a statutory provision's meaning, a court must "consider the statutory framework as a whole." (*People v. Lewis, supra,* 11 Cal.5th 952, 961 [citation omitted].) This Part examines a key aspect of the statutory framework, burden of proof.

In an evidentiary hearing under subdivision (d)(3), the prosecution must prove ineligibility for relief beyond a reasonable doubt. That is the burden of proof that historically has been used for criminal trials. In California, this goes back to *People v. Stuart* (1854) 4 Cal. 218, 223-224; it was codified in 1872 as Penal Code section 1096. (*See also* Evid.Code, § 501 [burden in criminal case is subject to Penal Code section 1096 (except for insanity)].)

This Court explained burdens of proof in *People v. Arriaga* (2014) 58 Cal.4th 950: "The standard of proof, the United States Supreme Court has said, 'serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision. [Citation.].... 'The standard of proof that is required in a given instance has been said to reflect '...the degree of confidence our society thinks [the factfinder] should have in the correctness of factual conclusions for a particular type of adjudication.' ... [Citation.]" (*Id.* at pp. 961-962.) The highest burden of proof is "the 'beyond a reasonable doubt' standard applied in criminal cases, in which 'our society

imposes almost the entire risk of error upon itself.' [Citation.]" (*Id*. at p. 961.)

Thus, criminal trials have a burden of proof beyond a reasonable doubt because in those cases, involving potentially grave consequences of deprivation vs. retention of liberty, society – speaking through the Legislature – demands the highest confidence in correctness of the adjudicator's factual conclusions. And because a section 1172.6(d)(3) evidentiary hearing has the same burden of proof – beyond a reasonable doubt – for a liberty interest, it has the same consideration: Society, speaking through the Legislature, demanded the highest degree of confidence in correctness of the adjudicator's factual conclusions.

The reasonable doubt standard for trial "is a prime instrument for reducing the risk of convictions resting on factual error." (*In re Winship* (1970) 397 U.S. 358, 363.) Since the Legislature assigned the same burden in a subdivision (d)(3) hearing, it correspondingly chose the same "prime instrument for reducing the risk of [denials] resting on factual error."

By contrast, unexcepted hearsay for which the affected person had no right of cross-examination is not a type of evidence that engenders confidence in its reliability: "The absence of the right to cross-examination prevents a party from testing a declaration's truth, while also preventing the finder of fact from being able to judge credibility." (*People v. Bob* (1946) 29 Cal.2d 321, 325.)

"[T]he rule that hearsay evidence is inadmissible because it is inherently unreliable is of venerable common law pedigree." (*Walker v. Superior Court* (2021) 12 Cal.5th 177, 205; *People v.*

Ayala (2000) 23 Cal.4th 225, 268.) " 'Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover combine to support the rule that hearsay evidence is totally inadmissible. … The danger of admitting hearsay evidence is sufficient to admonish courts of justice against lightly yielding to the introduction of fresh exceptions to an old and well established rule, the value of which is felt and acknowledged by all.' [Citation.]" (*Englebretson v. Ind'l Acc. Comm.* (1915) 170 Cal. 793, 798.)

It is an oxymoron to say unexcepted hearsay to which objection is made, which by definition lacks inherent reliability, provides "the highest degree of confidence in the correctness of the factfinder's factual conclusions" for proof beyond a reasonable doubt. Nothing in subdivision (d)(3) shows the Legislature to have adopted that illogical perspective.

VI. The history of S.B. 775, an ameliorative amendment to S.B. 1437, explains why the sentence "The admission of evidence ..." reads as it does, and why it is only consistent with a right of cross-examination.

A. Overview

Although legislative history is unnecessary for a statute with plain meaning (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735), here it can help explain why subdivision (d)(3) contains the language it does, and what the Legislature intended to accomplish in S.B. 775 by amending subdivision (d)(3) thus.

For this analysis, appellant refers to proposals and committee reports of S.B. 775, at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB775.[2]

S.B. 775 was follow-up legislation to S.B. 1437, enacted effective January 1, 2019. In both bills, the procedures for determining whether the petitioner was entitled to relief subsequent to an order to show cause were contained in subdivision (d) of original section 1170.95, later 1172.6.

Appellant first examines S.B. 1437, to show where the Legislature started, before examining S.B. 775 to see where it went and why.

B. Subdivision (d)(3), as originally enacted by S.B. 1437

The original subdivision (d)(3), enacted by S.B. 1437 and contained in then-section 1170.95, provided:

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[2] Judicial notice of legislative history materials will be requested separately.

> At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resentenced on the remaining charges. *The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens*.

(Emphasis added.)

The underscored sentences above were S.B. 1437's only provisions on how judges were to conduct the subdivision (d)(3) evidentiary hearing. The italicized sentence above was the only provision that specified what evidence would be admissible.

The parties' ability to rely on the "record of conviction," without having to meet Evidence Code section 1291's witness unavailability requirement for former testimony, was crucial to S.B. 1437. The Legislature obviously knew section 1170.95 proceedings would involve convictions many years or decades old, it would needlessly consume resources to require finding every original witness to retry those cases, and witness memories would fade over time.

The "record of conviction" language was a logical compromise that made S.B. 1437 workable. "The Legislature landed on that compromise as a way of extending the ameliorative benefits of its redefinition of murder to people previously convicted under prior law, which they judged to be too harsh. They could have directed that qualifying offenders receive a new trial by a new jury on the critical factual questions. But that was impractical for many reasons; the expense would have

been enormous, and the chances of obtaining reliable evidence from witnesses who remembered the events from years or decades earlier would be small. The Legislature also could have simply refused to make the benefits of the new law available to people already validly convicted under the old law. They chose the middle course of requiring trial judges to decide the critical factual questions based – at least in some cases – on a cold record." (*People v. Clements, supra,* 75 Cal.App.5th 276, 297.)

What matters here is that "record of conviction" enabled this compromise, without sacrificing the petitioner's guarantee of having the fundamental right to cross-examine at some point.

In *People v. Reed, supra,* 13 Cal.4th 217 (*Reed*), this Court held that under any possible definition, a preliminary hearing transcript was part of the "record of conviction" because of the "procedural protections afforded the defendant during a preliminary hearing tend to ensure the reliability of such evidence. **Those protections include the right to confront and cross-examine witnesses** and the requirement those witnesses testify under oath, coupled with the accuracy of the court reporter's verbatim reporting of the proceedings." (*Id.* at p. 223 [emphasis added].)

This Court later elucidated *Reed* by holding that the record of conviction only consisted of statements which "reliably reflect[ed] the facts of the offense for which the defendant was convicted." (*People v. Trujillo* (2006) 40 Cal.4th 165, 179 [quoting *Reed*, 13 Cal.4th 217, 223].) *Trujillo* also reiterated *Reed*'s reliance on "protections [that] include the right to confront and cross-examine witnesses." (*Trujillo*, at p. 177.)

"[I]n enacting a statute, the Legislature is presumed to have knowledge of existing judicial decisions and to have acted in light of those decisions." (*Watts v. Crawford* (1995) 10 Cal.4th 743, 754 [citations omitted].) Thus in S.B. 1437, grand jury transcripts were not part of the "record of conviction" on which subdivision (d)(3) permitted the parties to rely, because lack of a right of cross-examination took grand jury transcripts outside of the *Reed*/*Trujillo* "protections [that] include the right to confront and cross-examine witnesses." (*Accord People v. Rivera* (2021) 62 Cal.App.5th 217, 235 [when (then-)section 1170.95 petitioner's pleas to indictment did not admit truth of anything in the grand jury transcript, transcript could not be used to defeat a prima facie case].)

In short, grand jury transcripts were inadmissible under the original subdivision (d)(3) created by S.B. 1437. The question is whether S.B. 775 changed that, by permitting this form of unexcepted hearsay where it wasn't permitted before.

C. S.B. 1437, the "record of conviction" clause, and Evidence Code section 300.

S.B. 1437 wrote into subdivision (d)(3) the burden of proof beyond a reasonable doubt. Thus, in a (then-)section 1170.95 proceeding, the issue in an evidentiary hearing was simple: Did the prosecution prove the petitioner guilty beyond a reasonable doubt under applicable (current) law? (*People v. Patton, supra,* 17 Cal.5th 549, 559; *People v. Duchine* (2021) 60 Cal.App.5th 798, 814.)

This determination of guilt beyond a reasonable doubt under applicable law was a type of determination identical to

trial of a current criminal charge, with the same burden of proof for the ultimate factual determination. Thus, although S.B. 1437's enactment of subdivision (d)(3) did not include express procedures for the evidentiary hearing, logically courts could have utilized statutory procedures akin to a criminal trial. Numerous opinions have held that when a court must define procedures in a statutory proceeding with no express procedural language, it should import statutory procedures from analogous proceedings. (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 247; *People v. Cheek* (2001) 25 Cal.4th 894, 899; *People v. Victor* (1965) 62 Cal.2d 280, 288-289; *Gordon B. v. Gomez* (2018) 22 Cal.App.5th 92, 98.)

Since a criminal trial and a section 1170.95 proceeding both determined whether a person was guilty of a crime under applicable law beyond a reasonable doubt, logically section 1170.95 proceedings would have utilized procedures for making such decisions in criminal trials (irrespective of constitutional protections unique to criminal trials). They would have included the Evidence Code, subject only to the express "record of conviction" exception. Doing so also would have followed statutory law, Evidence Code section 300:

> Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal or superior court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

"If this command were not clear enough, the Law Revision Commission Comment to section 300 resolves any conceivable ambiguity in the statutory language; the Commission states that

section 300 'makes the Evidence Code applicable to all proceedings conducted by California courts except those court proceedings to which it is made inapplicable by statute....' [Citation.] The case law is equally explicit: 'Evidence Code section 300 makes it clear that, except as otherwise provided by statute, the Evidence Code applies to every evidentiary hearing in the state courts....' [Citations.]" (*Jauregi v. Superior Court, supra,* 72 Cal.App.4th 931, 939; *Bonnie P. v. Superior Court, supra,* 134 Cal.App.4th 1249, 1255.)

Thus, when a statute is silent on the nature of the evidence that is admissible, the Legislature's silence means Evidence Code section 300 applies. (*Jauregi*, 72 Cal.App.4th 931, 939.) S.B. 1437 had no indication of contrary intent.

Consequently, under section 300, the Evidence Code should have applied to subdivision (d)(3) evidentiary hearings enacted by S.B. 1437, subject to parties' right to rely on the record of conviction which the Legislature wrote into the statute. Subdivision (d)(3)'s "record of conviction" provision overrode by necessary implication Evidence Code section 1291's witness unavailability requirement; since the two provisions were irreconcilable, the later specific statute (subdivision (d)(3)) operated as an exception to the earlier general statute (section 1291). (*County of Placer v. Aetna Casualty & Surety Co.* (1958) 50 Cal.2d 182, 189.) But Evidence Code section 300 would have required using the rest of the Evidence Code – *including the rest of section 1291*, *other than the witness unavailability requirement*.

This would have enabled petitions on old cases to proceed in a practical, realistic way – permitting the parties to rely on

"record of conviction" transcripts apart from Evidence Code section 1291's witness unavailability requirement, but otherwise utilizing the Evidence Code for evidentiary rules, thus preserving the right of cross-examination. It was an elegant solution.

However, that wasn't how things turned out.

D. *Williams* and *Harris*: Admitting "reliable hearsay," notwithstanding Evidence Code section 300.

As of May 20, 2021, the date of the first amended version of S.B. 775, two published opinions had permitted use of "reliable hearsay" for proof beyond a reasonable doubt in subdivision (d)(3) proceedings. Neither opinion mentioned Evidence Code section 300, so perhaps it wasn't briefed. But after these opinions, the Legislature would end up addressing that issue in S.B. 775.

The first opinion was *People v. Williams* (2020) 57 Cal.App.5th 652 (*Williams*). *Williams* held that although the facts in an appellate opinion and a "Statement by Judge and District Attorney" were hearsay, they were admissible as "reliable hearsay." (*Id*. at p. 661.) The theory was that because a section 1170.95 was a resentencing which *Williams* deemed an "act of lenity" (*ibid*.), "the Legislature gave the superior court unfettered discretion to consider 'evidence' without any restriction at the subdivision (d)(3) hearing to determine the petitioner's eligibility for resentencing. [Citation.] [¶] Hence, the rules of evidence governing a section 1170.95 subdivision (d)(3) hearing should be no different than those applied at other analogous postconviction resentencing proceedings." (*Ibid*.)

People v. Harris (2021) 60 Cal.App.5th 939 (*Harris*) followed *Williams*. Rejecting a hearsay contention, *Harris* held

that factual statements in an appellate opinion were admissible as part of the record of conviction, because they were "reliable hearsay." (*Harris*, at p. 954 [quoting *Williams*].)

Williams and *Harris* never considered the absence of authority for deeming proof beyond a reasonable doubt to be satisfied by "reliable hearsay" that wouldn't even be admissible in a civil case with a lesser preponderance burden. The sentencing proceeding to which *Williams* and *Harris* analogized is discretionary (*People v. Salazar* (2023) 15 Cal.5th 416, 424), and as such has no burden of proof; in *that* context, due process may permit "reliable hearsay." But that isn't the context of a subdivision (d)(3) evidentiary hearing.

Nonetheless, as of May 20, 2021, *Williams* and *Harris* were the only published opinions on whether hearsay was admissible in a (d)(3) hearing – and they were contrary to Evidence Code section 300. Thus, the Legislature set about to fix that.

E. The May 20, 2021 version of S.B. 775: Fixing the *Williams*/*Harris* problem by incorporating the Evidence Code

The bill's first amended version, May 20, 2021, added further detail to then-section 1170.95. Relevant here was a proposed addition to subdivision (d)(3):

> (3) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. *The provisions of the Evidence Code shall apply in this hearing*.... The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.

(Italics in original, for proposed addition)

The purpose of the italicized language is easy to glean: It was intended to override the *Williams* and *Harris* decisions discussed in section (D), *ante*, and to clarify that the Evidence Code really *did* apply to subdivision (d)(3) evidentiary hearings – as the Legislature could logically have assumed in enacting S.B. 1437, as explained in section (C), *ante*.[3]

F. Creating another problem by fixing the first one?

However, an Assembly Public Safety Committee (APSC) report on S.B. 775 flagged a problem with the May 20, 2021 version, with its express provision that the Evidence Code – arguably the *entire* Evidence Code – applied in subdivision (d)(3) evidentiary hearings.

The APSC report's concern was that this provision could be interpreted as requiring witness unavailability under Evidence Code section 1291, subdivision (a) in order to proceed on the "record of conviction." Indeed, the report interpreted this provision as doing just that. But, it added, "the author should consider clarifying this point." (S.B. 775, APSC Rpt. (July 12, 2021), pp. 10-11.)

G. *Lewis*'s holding that S.B. 1437 permitted reliance on transcripts that were part of the "record of conviction."

Two weeks after the APSC report, this Court decided *People v. Lewis, supra*, 11 Cal.5th 952. *Lewis* agreed with the parties that the prima facie case stage can rely on the "record of

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[3] *Williams* and *Harris* were followed by *People v. Myles* (2021) 69 Cal.App.5th 688. While *Myles* was not issued until after S.B. 775 was enacted, the Legislature could logically have assumed *Williams* and *Harris* would spawn similar opinions.

conviction" (*id*. at pp. 970-972), including a prior trial transcript and, for plea cases, a preliminary hearing transcript. (*See, e.g., People v. Cruz* (2017) 15 Cal.App.5th 1105, 1111; *People v. Nguyen* (2020) 53 Cal.App.5th 1154, 1162, fn. 8.)

Thus, *Lewis* held a section 1172.6 proceeding could be litigated on transcripts without showing witness unavailability. However, it did so on S.B. 1437's "record of conviction" language.

H. The Legislature's reconciliation of sections (E), (F), and (G) above

With *Lewis* decided, legislative staffers set to figuring out how S.B. 775 should address the APSC report's concern that the May 20 amendment may have inadvertently revived Evidence Code section 1291's witness unavailability requirement, when the Legislature wished to ensure that section 1170.95 petitions could be decided on the record of conviction. This problem had to be fixed while maintaining the May 20 amendment's elimination of the *Williams*/*Harris* theory of "reliable hearsay."

The solution in the Assembly's August 30 amendment, passed by both houses on September 10, included the following:

(1) It added uncodified section 1(d) to the bill, to say S.B. 775 "[a]ddresses what evidence a court may consider at a resentencing hearing (clarifying the discussion in *People v. Lewis, supra,* [11 Cal.5th 952,] at pp. [970-972]) – the "record of conviction" portion of *Lewis*. And:

(2) It rewrote subdivision (d)(3) by adding the specifics regarding admissibility of evidence – the passages between "The admission of evidence in the hearing..." and the sentence "The prosecutor and the petitioner...." – and deleted the last sentence

that began "The prosecutor and the petitioner may rely on the record of conviction...."

The combination of the two clarified that:

(a) The Legislature was codifying *Lewis*'s holding for reliance on the record of conviction. (*Accord People v. Arellano, supra,* 16 Cal.5th 457, 468 [citing uncodified section 1 in holding S.B. 775 "codif[ied] certain aspects of our decision in *Lewis*"].) *Lewis* was already authority on using the "record of conviction," so it didn't need to be in codified sections. Its insertion in uncodified section 1(d) further ensured everyone would know that parties could still rely on records of conviction, as they could under S.B. 1437. And:

(b) The Legislature limited what portions of the "record of conviction" were usable, by the new criteria analyzed in Part III above. It kept the main criterion **[1]**, "The admission of evidence in the hearing shall be governed by the Evidence Code"; but added the restrictive clauses in exception criteria **[2a]** and **[2b]** – thus nullifying Evidence Code section 1291's unavailability requirement for use of a record of conviction, while still keeping every other Evidence Code provision so as to eliminate the "reliable hearsay" of *Williams* and *Harris*.

(c) Since the Legislature used (a) and (b) together as provisions governing the record of conviction, there was no need for an express "record of conviction" provision, which was what *Williams* and *Harris* used to admit hearsay under S.B. 1437. Hence, "record of conviction," which had been retained in S.B. 775's May 20 amendment, was deleted.

None of this suggests any intent by the Legislature to permit admission of hearsay grand jury transcripts – especially since, as shown in section (B) above, hearsay shouldn't have been admissible to begin with. In S.B. 775, the Legislature was simply eliminating the *Williams*/*Harris* deviation from the right of cross-examination and reinstating Evidence Code section 300's hearsay rule; while still permitting reliance on the "record of conviction" consistently with the Evidence Code, except without need to show witness unavailability. In so doing, it preserved the right of cross-examination. Grand jury transcripts do not qualify.

VII. As this Court has held, courts should not presume the Legislature intended to overthrow established tenets of law, such as the hearsay rule or the right of cross-examination, by the indirect means of a vague, anodyne phrase such as "witness testimony."

Part VI above shows that in S.B. 775, the Legislature did not intend to enact a 'sleeper' hearsay exception for grand jury transcripts in subdivision (d)(3)'s phrase "witness testimony." This Part shows that courts do not presume the Legislature would nullify fundamental laws, like the hearsay rule and right of cross-examination, by such a vague method.

"[I]t is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication. [Citations.]" (*Regency Outdoor Advertising, Inc. v. City of Los Angeles* (2006) 39 Cal.4th 507, 526 (*Regency*).) It is thus "highly unlikely that the Legislature would make such a significant change in [established laws] without so much as a passing reference to what it was doing. The Legislature 'does not, one might say, hide elephants in mouseholes.' " (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1171 [citations omitted].)

Here, the "long-established principle[ ] of law" is that proof beyond a reasonable doubt that a person committed a crime under applicable law cannot be established (over objection) by hearsay the affected party never had the right to cross-examine, because the California Legislature has never made such evidence admissible for a final decision on a person's liberty after an

evidentiary proceeding with proof beyond a reasonable doubt. Had the Legislature wanted to insert into S.B. 775 an unprecedented hearsay exception for grand jury testimony, it would have said so, not cached it in the anodyne phrase "witness testimony."

When the Penal Code was enacted in 1872, section 686, subdivision (3) provided (as it still does) that the defendant was entitled "to be confronted with the witnesses against him, in the presence of the court." The only exceptions involved certified testimony under oath which the defendant had an opportunity to cross-examine. (*See also People v. Morine* (1880) 54 Cal. 575, 576-577 [explaining this].) Over time, hearsay became admissible if it came under a recognized hearsay exception (*People v. Weatherford* (1945) 27 Cal.2d 401, 421), but not if it didn't (*People v. Bob, supra,* 29 Cal.2d 321, 324), and there was no hearsay exception for grand jury proceedings where the affected person had no cross-examination right. (*See Oppenheimer v. Clunie* (1904) 142 Cal. 313, 322.)

California's longtime hearsay prohibition follows the history of Anglo-American jurisprudence. "The general rule that hearsay is inadmissible because it is inherently unreliable is of venerable common law pedigree." (*Walker v. Superior Court, supra,* 12 Cal.5th 177, 205 [citation omitted].) Dean Wigmore lauded the hearsay rule as "that most characteristic rule of the Anglo-American law of evidence,— a rule which may be esteemed, next to jury-trial, the greatest contribution of that eminently practical legal system to the world's jurisprudence of procedure."

(J. Wigmore, "The History of the Hearsay Rule" (1904) 17 Harv.L.Rev. 437, 458.)

The hearsay rule exists to preserve the fundamental right of cross-examination, which Dean Wigmore called "beyond doubt the greatest legal engine ever invented for the discovery of truth." (1 John Wigmore, A Treatise on the Anglo-American System of Evidence (2d ed. 1923), § 1367 [quoted in, e.g., *Tupper v. Superior Court* (1958) 51 Cal.2d 263, 269].) Thus from the earliest days of statehood, cross-examination has been "one of the most important privileges pertaining to a trial of an issue of fact. It exists, and ought to exist, in great latitude, for it is the only effectual shield against perjury, and the only sure means of eliciting the whole truth." (*Jackson v. Feather River & Gibsonville Water Co.* (1859) 14 Cal. 18, 24.)

Thus, it cannot be presumed that the Legislature in its last amendment to S.B. 775 – though abrogating the *Williams*/*Harris* acceptance of "reliable hearsay" (*see* Part VI(D), *ante*) – simultaneously inserted a different provision that unexcepted hearsay could support or provide proof beyond a reasonable doubt, "unless such intention [was] made clearly to appear by express declaration or by necessary implication." (*Regency, supra,* 39 Cal.4th 507, 526.)

There is no such express declaration. In S.B. 775's amendments to subdivision (d)(3), the Legislature didn't "express[ly] declar[e]" that "evidence previously admitted at any prior hearing or trial that is admissible under current law" includes hearsay grand jury testimony.

Nor does subdivision (d)(3) contain any such "necessary implication." "A necessary implication within the meaning of the law is one that is so strong in its probability that the contrary thereof cannot reasonably be supposed." (*Sabatasso v. Superior Court* (2008) 167 Cal.App.4th 791, 797; *Lubner v. City of Los Angeles* (1996) 45 Cal.App.4th 525, 529 [citations omitted].) That cannot be said for the theorized creation of a new "grand jury exception" that lacks support in statutory language or legislative history.

The majority below considered it sufficient that "Robinson himself could have presented evidence to refute that established by the witnesses at the grand jury hearing." (*Robinson*, 106 Cal.App.5th 854, 870.) That is true whenever a party seeks to admit unexcepted hearsay; however, unexcepted hearsay has still been inadmissible in California for well over 150 years. Moreover, the concerns that make hearsay inadmissible are magnified in section 1172.6 proceedings, since most are in old cases in which memories have faded. Given the Legislature's assurance beginning with S.B. 1437 that parties could rely on the "record of conviction" rather than having to retry the case (*see* Part VI(B), *ante*), one cannot presume the Legislature lost sight of that.

The majority below posited that if the Legislature had intended a 'carve-out' exclusion of grand jury testimony in subdivision (d)(3), it would have said so. (*Robinson,* 106 Cal.App.5th 854, 871.) This Part has shown why that view erroneously reverses the "it would have said so" burden.

Yet the fact is that the Legislature *did* say so, as described in Part III, *ante*. It need have said no more.

VIII. The majority below relied on 'dictum drift,' which took an original dictum out of context and did not support the majority's result.

A. Overview

The majority opinion below emanates from a drift in Court of Appeal language that began with a case-correct application of subdivision (d)(3) which included a stray piece of dictum – originally innocuous – that was subsequently transformed into a larger but erroneous "rule." The judicially created "rule," dictum in a correctly decided case that didn't need it, led to erroneous results in later cases including this one.

B. *Cody*

The first opinion was *People v. Cody* (2023) 92 Cal.App.5th 87 (*Cody*). In Cody's subdivision (d)(3) hearing, the trial court relied on his 2012 trial transcripts. Cody contended on appeal that this was impermissible without a showing of witness unavailability. (*Id*. at p. 103.) His premise was the (d)(3) phrase "The admission of evidence in the hearing shall be governed by the Evidence Code," which he claimed included Evidence Code section 1291's witness unavailability requirement. (*Id*. at pp. 103-104.)

The Court of Appeal rejected Cody's claim; appellant agrees. As appellant has shown, the Legislature in S.B. 1437 provided that section 1170.95 proceedings could be adjudicated on 'cold' records, as long as the petitioner's right to cross-examination was respected at some point, because of the huge problems that doing otherwise would have entailed. Nothing in S.B. 775 suggested the Legislature intended to change that, and S.B. 775 contained language to perpetuate it.

Cody's rejection of the petitioner's claim was based on subdivision (d)(3)'s "explicit exception that provides for the admission of former testimony: 'The admission of evidence in the hearing shall be governed by the Evidence Code, *except that* the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including *witness testimony* ... .' (§ 1172.6, subd. (d)(3), italics added.)" (*Ibid*.) As his earlier analyses have shown, appellant agrees. Appellant further agrees with *Cody*'s perspective of legislative intent:

> Were we to adopt Cody's interpretation of section 1172.6, it would mean we would have to disregard the statute's plain language. Further, it would mean that all section 1172.6 evidentiary hearings would effectively become new court trials. As another appellate court recently stated, that is plainly not what the Legislature intended. (*People v. Clements, supra,* 75 Cal.App.5th 276, 297 [quoted on this topic *ante*, pp. 48-49].)

(*Cody*, at p. 104.)

That was all *Cody* needed to say. However, *Cody* also offered the following:

> Section 1172.6, subdivision (d)(3), does contemplate that there may be some evidence that was admitted at a former trial that would not be admissible under current law. (See, e.g., *People v. Sanchez* (2016) 63 Cal.4th 665, 686 {*Sanchez*} [an expert cannot relate case-specific out-of-court statements to support the expert's opinion].) However, that does not mean that all witness testimony at a prior trial cannot be admitted without the prosecution making a showing of witness unavailability. In this case, Cody has not identified any specific evidence that was admitted at the 2012 trial that he now argues would be inadmissible under current law.

(*Cody*, at p. 104.)

The above is correct if taken literally. Had petitioner Cody objected to specific trial evidence as inadmissible under current law, that objection could have been considered. He didn't, so his entire trial transcript was admissible, since there was nothing inherently inadmissible about it.

But it was unnecessary for the opinion to use newly prohibited evidence – i.e., "*Sanchez* hearsay" – as a hypothetical example of what Cody could have cited as inadmissible under current law had he cited anything at all. What mattered was that Cody didn't identify any specific evidence as inadmissible under current law, so the entire trial transcript was admissible. The opinion's "*Sanchez* example," of theorized possible claims of inadmissibility that Cody never made, was dictum.

Although it was innocuous in the *Cody* opinion, the dictum then took on a life of its own.

C. *Davenport*

Next was *People v. Davenport* (2023) 95 Cal.App.5th 1150 (*Davenport*). *Davenport* held that at a subdivision (d)(3) hearing, the trial court properly admitted a transcript of testimony from Davenport's preliminary hearing. (*Id.* at p. 1153.)

Appellant agrees again. A petitioner's preliminary hearing transcript meets the criteria of both restrictive relative clauses **[2a]** and **[2b]** at the top of Part III ("previously admitted at any prior hearing or trial," and "admissible under current law" without regard for Evidence Code section 1291's witness unavailability requirement), so it is admissible in a subdivision (d)(3) hearing. This is the same result that would have obtained

under S.B. 1437's "record of conviction" language, which S.B. 775 didn't change. (*Ante*, Part VI)

Had *Davenport* left the matter there, it would have been unexceptionable. Moreover, as in *Cody*, the petitioner didn't challenge any specific portion of the preliminary hearing testimony as inadmissible under current law.

However, *Davenport*'s language went further by taking *Cody*'s hypothetical "*Sanchez* example" and turning it into a general rule of law, based on a "change of law only" theory that is nowhere in the statute and was unnecessary to the opinion. Specifically, *Davenport* extended *Cody* thus, supported only by the phrase "we think":

> * * * To the extent the phrase "is admissible under current law" creates ambiguity, we think the most natural reading of those words is that the basis for admission of testimony *at the hearing or trial in which it was previously admitted must remain a valid basis for admitting the testimony* "under current law." The statute "contemplate[s] that there may be some evidence that was admitted at a former trial that would not be admissible under current law." (*Cody, supra,* 92 Cal.App.5th at p. 104 [citing "case-specific" hearsay under *People v. Sanchez* (2016) 63 Cal.4th 665, 686, as an example].) Hardiamon [the witness] testified competently from her personal knowledge at the preliminary hearing in 2007, and no change in the law would bar her testimony if that hearing were held today.

(*Davenport*, at pp. 1158-1159 [italics in original].)

Appellant respectfully disagrees that under subdivision (d)(3), 'change in the law' is required to make prior testimony "inadmissible under current law"; the phrase "inadmissible under current law" means what it says, no more. Thus, evidence in a (d)(3) hearing must either be admissible under the Evidence

Code, criterion **[1]** at the top of Part III, *ante*, or meet both of criteria **[2a]** and **[2b]** – "previously admitted at any prior hearing or trial" (**[2a]**) and "admissible under current law" (**[2b]**). If evidence was "previously admitted at any prior hearing or trial" but is not "admissible under current law, then it fails criterion **[2b]**, regardless of whether there has been a "change in the law." Conversely, *Davenport* cited no authority for its 'change of law theory' of "the most natural reading of [the] words ['admissible under current law']." Instead, it read into the statute words that aren't there.

This *Davenport* dictum was a variation of issue preclusion or law of the case, making evidence admitted in a prior hearing/trial automatically admissible in a section 1172.6 proceeding **unless** there was a change in law. Change of law is an exception to issue preclusion and law of the case (*People v. Strong* (2022) 13 Cal.5th 698, 716-717; *Di Genova v. State Board of Education* (1962) 57 Cal.2d 167, 179-180), but issue preclusion doesn't apply to mere evidentiary issues that do not necessarily decide a case (*People v. Santamaria* (1994) 8 Cal.4th 903, 921-922), and law of the case applies only to prior appellate decisions in the same case on the same issue (*Di Genova*, at p. 179). Thus again, the *Davenport* approach lacks support.

In conjunction with its dictum extension of *Cody*, the *Davenport* court proffered this: "If, as Davenport claims, section 1172.6, subdivision (d)(3) means that properly admitted former witness testimony must once again be run through the rigorous filter of the rules of evidence – but at a different time, under different sentences – the exception for previously admitted

testimony would be superfluous. So read, we could take a pen and strike out everything in the clause starting with 'except that the court may consider' through 'current law,' and the statute would mean the same thing." (*Id*. at p. 1159.)

Respectfully, that isn't so. The Evidence Code exception **[2a]/[2b]** for "evidence previously admitted at any prior hearing or trial that is admissible under current law" is not "superfluous": It was utilized to solve the drafting problem identified in Part VI above, and every word and phrase in subdivision (d)(3) has meaning as discussed in Part III above.

D. *Palacios*

Davenport's dictum extension of *Cody*'s hypothetical "*Sanchez* example" has led to erroneous decisions. The first in published authority was *People v. Palacios* (2024) 101 Cal.App.5th 942 (*Palacios*).

Palacios was convicted largely on his confession admitted at trial. His judgment was affirmed, with no issues raised regarding his confession's admissibility. In his section 1172.6 proceeding two decades later, the trial court questioned whether his confession was voluntary, and Palacios contended it wasn't. (*Id*. at p. 949.)

The Court of Appeal held that because Palacios didn't raise this objection at his trial, his confession was automatically admissible in the subdivision (d)(3) hearing over two decades later – even if it *had* been involuntary. (*Id*. at pp. 952-953.) Appellant disagrees, since an involuntary confession is not "admissible under current law," mandatory criterion **[2b]** at the top of Part III(A).

For its holding, *Palacios* (i) relied on the combined criterion **[2a]/[2b]** exception "evidence previously admitted at any prior hearing or trial that is admissible under current law," and (ii) quoted *Davenport*'s extension of *Cody*'s hypothetical "*Sanchez* example." (*Palacios*, at p. 952 [quoting *Davenport*, 95 Cal.App.5th 1150, 1159].) Appellant showed in the previous section why *Davenport*'s extension of *Cody*'s hypothetical "*Sanchez* example" was incorrect. Similarly, while *Palacios* followed *Davenport*'s theory that any other result would make the "previously admitted...." criterion **[2b]** "superfluous," appellant showed in the previous section why that was erroneous too.

Having proceeded from this incorrect extension of *Cody*'s hypothetical "*Sanchez* example," *Palacios* adopted *Davenport*'s theory that a transcript of a prior proceeding involving the defendant is automatically admissible, absent material change in law such as *Sanchez*. (*Palacios*, at pp. 952-953.) As shown in section (C) above, that was erroneous: Both criteria **[2a]** and **[2b]** at the top of Part III must be satisfied for subdivision (d)(3)'s exception to the Evidence Code, an involuntary confession cannot satisfy **[2b]**, *Cody*'s hypothetical "*Sanchez* example" didn't mean what the *Davenport* dictum ascribed to it, and it was erroneous as *Davenport* took it.

E. <u>*Robinson*</u>

Finally, there is the majority opinion below, *Robinson, supra,* 106 Cal.App.5th 854. *Robinson* followed the errors of *Davenport* and *Palacios*: (1) their transformation of *Cody*'s hypothetical "*Sanchez* example" into automatic admissibility of previously admitted evidence absent change in law, and (2) their

theory that any other result would render subdivision (d)(3)'s reference to previously admitted testimony, criterion **[2b]** in Part III above, "surplusage." (*Robinson*, at pp. 867-868.) Appellant showed those views were in error in sections (C) and (D) above. The majority below also had to go beyond *Davenport* and *Palacios* by fashioning its own theory of "hearing" in the criterion **[2b]** phrase "previously admitted at any prior hearing..." (*Robinson*, at pp. 869-872), addressed in Parts I, II, III and IV above.

This Court should return subdivision (d)(3) to its plain meaning. In doing so, it should reject *Davenport*'s dictum extension of *Cody*'s hypothetical "*Sanchez* example," adopted by *Palacios* and then *Robinson* as support for their incorrect results.[4]

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[4] *Cody*'s hypothetical *Sanchez* example, and extensions of it including the *Davenport* dictum, were cited as support in *People v. Ramos* (2025) 112 Cal.App.5th 174, 186-191, which held transcripts of a co-defendant's solo trial – at which the section 1172.6 petitioner obviously had no right of cross-examination – were admissible as "witness testimony." *Ramos* is currently on petition for review (No. S292224).

IX. The error is prejudicial.

In a proceeding affecting liberty emanating from the original trial – here, a proceeding for vacatur of convictions and "resentenc[ing]" (§ 1172.6, subds. (a), (d)(3)) – denial of cross-examination of the victims and the co-defendant who inculpated Mr. Robinson is federal constitutional error. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 678; *see People v. Quan* (2023) 96 Cal.App.5th 524, 532 [federal constitutional confrontation guarantee in section 1172.6 proceeding].) As such, it is governed by *Chapman v. California* (1967) 386 U.S. 18, 23-24, which requires reversal unless the prosecution can show there is no reasonable possibility the error affected the judgment. That showing cannot be made, because the grand jury testimony was central to the court's consideration, and what remained was fragmentary as discussed below. (*People v. Castaneda-Prado* (2023) 94 Cal.App.5th 1260, 1293-1294.)

The error was also prejudicial under state law, which requires only "a *reasonable chance*, more than an "*abstract possibility*," of a different result. (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1050.) Without the grand jury transcript, there remained only the testimony of Det. Naso and petitioner Robinson, plus the stipulation. In Det. Naso's testimony, Sue Chen wasn't given the opportunity to identify a photo of Delbert Rivers, the photo of Prentice Robinson in her photo six-pack didn't have facial tattoos whereas Mr. Robinson had one or more at the time (RT 34-35), Ms. Chen made a cross-racial identification with its increased possibility for error (*see, e.g., People v. Williams* (1991) 228 Cal.App.3d 146, 150), and there

was no evidence of whether co-defendant Rivers might have resembled Mr. Robinson. All of this opened the accuracy of the identification to serious question. Moreover, police didn't get a translator for this identification despite the language differences. (RT 32.) Finally, there is no evidence of what exactly Ms. Chen said at that time, since Det. Naso couldn't remember specifics of the encounter 12 years later. (RT 30, 31, 32.)

Without the grand jury evidence, Mr. Robinson might not have testified (*People v. Spencer* (1967) 66 Cal.2d 158, 168-169); had he still testified, his testimony only implicated Delbert Rivers. Either way, there is a "reasonable chance, more than an abstract possibility" that the trial court might have found differently without the error.

Accordingly, the judgment should be reversed.

Respectfully submitted this 21st day of August, 2025.

By: Michelle Peterson

Michelle M. Peterson
Counsel for Appellant Prentice Robinson
Under Appointment by the Supreme Court

CERTIFICATION OF WORD COUNT

As counsel for the appellant, I certify under rule 8.360(b)(1), California Rules of Court, that this brief contains 14,000 words according to the word count of the computer program used to prepare the brief.

I declare under penalty of perjury of the laws of the State of California that the above is true and correct, and that this document was executed on the date below.

Respectfully submitted this 22nd day of August, 2025.

Michelle Peterson

Michelle May Peterson
Counsel for Appellant Prentice Robinson
Under Appointment by the Supreme Court

DECLARATION OF SERVICE BY MAIL AND E-SERVICE

I, MICHELLE MAY PETERSON, declare: I am an active member of the State Bar of California, over the age of 18 and not a party to this action. My address is P.O. Box 387, Salem MA 01970-0487. On August 22, 2025, I submitted the foregoing APPELLANT'S OPENING BRIEF ON THE MERITS, in No. S288606, to TrueFiling for filing with this Court and e-service as stated below; and served paper copies addressed to all of the other persons/entities below by placing a true copy in an envelope to the persons below at the addresses below, deposited in the U.S. Mail, postage paid:

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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of August, 2025.

Michelle Peterson

Michelle May Peterson

Supreme Court of California
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STATE OF CALIFORNIA
Supreme Court of California

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